

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Closed Captioning of Internet Protocol-Delivered Video Programming:)	MB Docket No. 11-154
Implementation of the Twenty-First)	
Century Communications and Video)	
Accessibility Act of 2010)	

**COMMENTS OF THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments with respect to the September 19, 2011 *Notice of Proposed Rulemaking* (“*NPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ In the *NPRM*, the Commission seeks comment on the implementation of the provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 that require the FCC to mandate closed captioning of online video content previously shown on television with captions upon the effective date of the new rules.²

As stated by the Commission, its goal “is to require the provision of closed captions with IP-delivered video programming in the manner most helpful to consumers, while ensuring that [its] regulations do not create undue economic burdens for the distributors, providers, and owners of online video programming.”³ While this goal is commendable, ITTA provides these comments to raise two points that the Commission must consider as it adopts regulations

¹ *In the Matter of Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, MB Docket No. 11-154 (rel. Sept. 19, 2011) (“*NPRM*”).

² Pub. L. No. 111-260, 124 Stat. 2751, § 202(b) (2010). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

³ *NPRM* at ¶ 1.

implementing captioning requirements for online programming. First, any definition the Commission adopts for video programming distributors (“VPDs”) in the online captioning context should not include multichannel video programming distributors (“MVPDs”) who use Internet protocol (“IP”) to deliver to end users video programming that is being distributed and exhibited on television. Second, any definition of VPD in the online captioning context should not include Internet service providers (“ISPs”) from whom end users receive Internet access pursuant to which they are able to view online video programming.

ITTA’s members are mid-size carriers that provide a range of voice, data, and video services to approximately 19.5 million access lines in 44 states. As such, ITTA member companies include both MVPDs that offer a video product that utilizes IP transmission to deliver programming to subscribers and ISPs that provide robust broadband service enabling subscribers to access the online content of their choice, including video programming provided on the Internet. In both cases, IP technology is integral to the services ITTA member companies provide to subscribers. The Commission should take care that its definitions and requirements for online captioning do not include IP-based video and broadband services provided by ITTA member companies and similar providers.

In the *NPRM*, the Commission proposes to adopt the statutory definition of a VPD as “an entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol.”⁴ The Commission should clarify that this definition does not encompass two types of services ITTA member companies and others provide to subscribers – IPTV service and broadband service. Specifically, the Commission should make clear that the definition of VPD does not apply to MVPDs that provide television programming to end user subscribers via IP transmission. MVPDs that provide subscription video service to customers,

⁴ *Id.* at ¶ 15.

including IPTV providers, are subject to the closed captioning obligations set forth in Part 79 of the Commission's rules, which cover the provision of video programming to residential households for distribution and exhibition on television.⁵ The goal of the instant proceeding is to apply captioning requirements to programming delivered online, not to address the captioning obligations to which IPTV providers already must comply under Part 79 of the Commission's rules.⁶ The Commission should clarify that the online captioning requirements it is proposing to adopt are intended to apply to video programming provided on the Internet and not video programming provided via IP transmission generally.

Additionally, the Commission should make clear that the definition of VPD does not include ISPs from whom end users receive Internet access enabling them to access online video content. ITTA member companies and other ISPs merely route and transmit the IP packets that contain the video stream to end users and have no control over the presence, insertion, placement, formatting, or other aspects of the closed captioning data included with such video programming. Thus, it would be both unfair and impractical for ISPs to be given the responsibility for captioning compliance under the new online captioning rules. Rather, responsibility for compliance with the rules should reside with the party or parties who can actually address captioning problems that may arise with online video programming.

With these clarifications, the Commission will be able to meet its objective of ensuring that consumers have access to online captions without creating additional and confusing regulatory obligations for entities that were not intended to be covered by the new rules.

⁵ 47 U.S.C. § 79.1.

⁶ *See id.* at n. 63 (noting that the Commission's use of the term VPD in the *NPRM* "is meant to reference [the FCC's] proposed definition of those terms in [the online captioning] context, and not to invoke any use of those terms in other contexts, including in [the Commission's] television closed captioning or video description rules."

Respectfully submitted,

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